

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1175 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AMIRGADH CEMENT LIMITED

Versus

PAT FAB INDUSTRIES

Appearance:

MR MC BHATT for the Petitioner.
MR AC GANDHI for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/03/2004

ORAL JUDGEMENT

The petitioner is the original defendant No.1,
against whom as well as against respondent No.2 herein,
respondent No.1 has filed a suit, being Civil Suit
No.2419 of 1987, which is pending before the City Civil

Court at Ahmedabad.

The aforesaid suit is filed by the plaintiff for a declaration to the effect that the demand made by defendant No.1 for encashment of the bank guarantee is illegal, wrongful and without jurisdiction. The plaintiff also prayed for a permanent injunction, restraining the defendant from encashing the bank guarantee. The plaintiff also prayed for a permanent injunction, restraining the defendant No.1 from encashing the bank guarantee.

In the aforesaid suit, the original plaintiff submitted an application, Exhibit 46 for amendment of the plaint. By the amendment, the plaintiff wanted to introduce a case about fraud perpetrated by the defendant No.1 on the plaintiff. In this revision, we are not concerned, in detail, about the nature of the amendment.

The trial court, by the impugned order, allowed the said amendment and the plaintiff was allowed to amend the plaint, as prayed for, and the plaintiff was directed to carry out the amendment within the stipulated time. It is the said order, which is impugned in this revision application at the instance of the original defendant No.1.

Considering the nature of the order, it is clear that it is an interlocutory order, which is passed below Exhibit 46 in Civil Suit No.2419 of 1987. In view of the amendment in Section 115 of the Code of Civil Procedure, this revision against such an interlocutory order is not maintainable, as, it is filed against an interlocutory order in a pending suit. Considering the aforesaid aspect, this revision cannot be entertained as the same is not maintainable in view of the amended Section 115 of the Code of Civil Procedure. The revision is, therefore, dismissed. Rule is discharged. No costs.

It is clarified that this Court has not pronounced upon the merits of the impugned order. It will be open for the petitioner to take appropriate recourse available to it as per law for challenging the impugned order. In order to enable the petitioner to take appropriate recourse available to it under law, interim relief granted earlier is extended upto 15th April, 2004.

24th March, 2004 (P.B. Majmudar, J.)

(apj)